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United States District Court,  
Western District of Washington  
at Seattle

SG NOV 25 2015

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

1 Lance P. McDermott, ) Case No.: 15 CV-01069-RAJ  
2 Plaintiff, *Pro Se*, )  
3 vs. ) Reply to USPS and GSAL APWU  
4 Postmaster General, Megan Brennan, ) Motion for Dismissal  
5 U.S. Postal Service (USPS), *Et Al*; )  
6 and ) Noted for Consideration on  
7 Greater Seattle Area Local (GSAL), ) 25 November 2015  
8 American Postal Workers Union )  
9 (APWU), President Myrna Umali, *Et Al*, Salaried Union Officials; )  
10 and  
11 USPS HR Manager, Alexis Delgado,  
12 in her individual capacity;  
13 USPS Maintenance Manager, James  
14 Norris, in his individual capacity.  
15  
16 Defendants.

17 I ask the Court to find that my FRCP error harmless and an excusable error,  
18 FRCP 6 (b)(1)(B). The Agency caused my greater harm violating the FRCP in the  
19 EEOC and MSPB administrative judicial processes. Exhibit C, FAD, page 2, - "...  
20 The [FRCP] concerning the limits on discovery do not apply in the federal-sector  
21 EEO complaint process..." I again ask the Court's leave to amend under Rule  
22 15(a)(2), "when justice so requires" despite my harmless error.

23 Consideration

24 The Agency's Motion to Dismiss compares my 2014 filing with the Court with  
25 the current complaint. "Further comparison of the current lawsuit to the 2014  
Action reveals extensive overlap and makes clear that the two actions arise from  
the same nucleus of facts." (Doc. 6, pg. 8) The Agency overlooks the continued

1 “overlapping” constitutional and statutory violations that have occurred since  
2 filing the 2014 complaint. For which, I have exhausted my administrative  
3 remedies, given a decision (exhibits A,B,C,G) or no decision within six months  
4 and filed a claim within two years (FRCP 15(c)(1)(A)). (Doc. 6, pg. 17) Since  
5 filing this present complaint I have exhausted other administrative processes  
6 (Reasonable Accommodation) and need to file an amended complaint with that  
7 cause of action, FRCP 15(c)(1)(C).  
8

9  
10 The Agency’s Motion does not address, FRCP 12(a)(3), federal employees sued  
11 in their individual capacity. Nor has the Agency/DOJ issued the required 28  
12 U.S.C. § 2679(d)(2) “scope of employment” certifications (or not § 2679(d)(3))  
13 required by the Federal Tort Claims Act, 28 U.S.C. 1346(b) for wrongful acts or  
14 omissions of federal employees, 28 U.S.C. § 2675(a). For personnel actions taken  
15 that were not for “inefficiency, neglect of duty or malfeasance” by the Agency  
16 Officials with the intent of inflicting emotional distress, (Restatement of Torts 2d  
17 § 46). See *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935) & *Myers*  
18 *v. United States*, 272 U.S. 52 (1926).  
19  
20  
21

22 The Agency asserts *Res Judicata* (Doc. 6, pg. 6-7). However, the Court in 2014  
23 did not issue a “final judgment on the merits” of my claims. The Agency makes an  
24 incorrect assertion that the Court dismissed my 2014 complaint for “lack of  
25

1 subject matter jurisdiction and for failure to state a claim.” (Doc. 6, pg. 2) In fact  
2 the Court dismissed my claims based on the Agency’s claim of immunity from the  
3 Administrative Procedures Act. “This Court dismissed these claims ‘because the  
4 Postal Reorganization Act exempts judicial review under the APA of postal  
5 service activities.” (Doc. 6, pg. 4)

7 The Union Motion to Dismiss asserts that it can recognize “two claims” (Doc. 4,  
8 pg. 3) in the complaint and in its conclusion (Doc. 4 pg. 10). The Union then  
9 claims the opposite, - “fails to suggest facts establishing any possible claim.” The  
10 two claims the Union did see: (1) failed to assist/denied assistance; and (2) the  
11 “self-enrichment” (Doc. 4, pg. 4) by Union Trustees taking Union Trust Funds.  
12 These claims are supported by the facts of “cannot use the copier” (Doc. 4, pg. 2)  
13 (see Doc. 4, pg. 6, “otherwise disciplined”) and Union Trustees (with fiduciary  
14 responsibility) taking salaries from the Union Members Trust Fund (exhibit E).  
15  
16  
17

18 I named GSAL APWU President Myrna Umali in the Complaint’s caption as  
19 the head of the “agency.” I would like to amend the complaint naming the twelve  
20 Union Trustees who are self-enriching themselves with “salaries” from the Union  
21 Trust Funds.  
22

23 The Union incorrectly contends that my claims are time barred. Since filing the  
24 original complaint I have exhausted the NLRB (exhibit E) and the AFL-CIO  
25

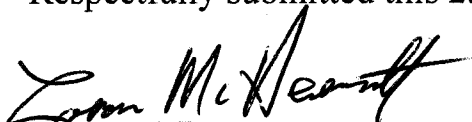
1 Ethical Conduct administrative processes. And, need to amend my complaint  
2 showing that exhaustion.

3  
4 Conclusion

5 Neither defendant, claiming confusion, has asked for a FRCP 12(e) Motion for  
6 a More Definite Statement pointing out the defects complained of and the details  
7 desired. Pursuant to FRCP 15 (b)(1) the Court should freely permit an amendment  
8 when doing so will aid in presenting the merits. And, under FRCP 15(2) a party  
9 may move at any time, even after judgment, motion to amend the pleadings.  
10

11  
12 I ask the Court to allow me to amend the complaint with claims that relate back  
13 to claims "arising out of the conduct \* \* \* set forth \* \* \* in the original pleading,"  
14 and to correct formal defects. *Rys v. U.S. Postal Service*, 886 F.2d 443 (1st cir.  
15 1989), *But cf. Montgomery v. U.S. Postal Service*, 867 F.2d 900 (5th cir. 1989),  
16

17 Respectfully submitted this 25<sup>th</sup> of November 2015,

18  
19   
20 Lance McDermott  
21 1819 So 104 ST  
22 Seattle, WA 98168  
23 206 331-1990  
24  
25

United States District Court,  
Western District of Washington

Lance P. McDermott,  
Plaintiff, *Pro Se*,  
vs.  
Postmaster General, Megan Brennan,  
U.S. Postal Service (USPS), *Et Al*;  
and  
Greater Seattle Area Local (GSAL),  
American Postal Workers Union  
(APWU), President Myrna Umali, *Et*  
*Al*, Salaried Union Officials;  
and  
USPS HR Manager, Alexis Delgado,  
in her individual capacity;  
USPS Maintenance Manager James  
Norris, in his individual capacity.  
Defendants.

I, Darlene McDermott, certify that on, 25 November 2015, I served by a copy  
of the Reply to:

USPS Attorney, Assistant U.S. Attorney General Jamal Whitehead.  
700 Stewart Street, # 5220, Seattle, WA 98101-1271

I, Darlene McDermott, certify that on, 20 November 2015, I served by certified  
mail a copy of the Reply to:

GSLA APWU Attorney, Robblee Detwiler & Black, PLLP,  
2101 Fourth Avenue, Suite 1000, Seattle, WA 98121.

I declare under penalty of perjury that this information is true.

Dated this 25 November 2015,



Darlene M. McDermott  
1819 So 104 ST  
Seattle, WA 98168  
206 409-3138